

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MICHAEL WILLIAMSON, ) No. CV-02-080-CI  
Petitioner, ) REPORT AND RECOMMENDATION TO  
v. ) TRANSFER SUCCESSIVE PETITION  
MAGGIE MILLER STOUT, ) TO NINTH CIRCUIT COURT OF  
Respondent. ) APPEALS

BEFORE THE COURT is Petitioner's "Successive Motion" noted for expedited hearing. (Ct. Rec. 71.) Petitioner is proceeding pro se.

On August 15, 2005, the Ninth Circuit Court of Appeals issued its Mandate, affirming the dismissal of the captioned matter. In light of Petitioner's prior petition, the current petition will be treated as a second or successive petition under 28 U.S.C. § 2244.

The district court lacks authority to review successive habeas petitions filed without authorization from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3)(A). Specifically, the habeas corpus statute provides:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

See 28 U.S.C. § 2244(b)(3)(A); see also Ninth Circuit Rule 22-3. When a second or successive petition is mistakenly submitted to the

1 district court, that court must refer it to the Court of Appeals.  
2 Ninth Circuit Rule 22-3(a). Accordingly,

3 **IT IS RECOMMENDED** this case be **TRANSFERRED** to the Ninth Circuit  
4 Court of Appeals, pursuant to 28 U.S.C. § 1631 and Ninth Circuit  
5 Rule 22-3(a).

6 Petitioner is advised this transfer will not by itself  
7 constitute compliance with § 2244(b)(3) and Ninth Circuit Rule 22-3;  
8 he still must file an application for leave to proceed in the Court  
9 of Appeals and make the showing required by § 2244(b)(2).  
10 Petitioner is directed to consult this statute and Ninth Circuit  
11 Rule 22-3 for further information.

12 **OBJECTIONS**

13 Any party may object to a magistrate judge's proposed findings,  
14 recommendations or report within ten (10) days following service  
15 with a copy thereof. Such party shall file written objections with  
16 the Clerk of the Court and serve objections on all parties,  
17 specifically identifying any the portions to which objection is  
18 being made, and the basis therefor. Any response to the objection  
19 shall be filed within ten (10) days after receipt of the objection.  
20 Attention is directed to Fed. R. Civ. P. 6(e), which adds another  
21 three (3) days from the date of mailing if service is by mail.

22 A district judge will make a de novo determination of those  
23 portions to which objection is made and may accept, reject, or  
24 modify the magistrate judge's determination. The judge need not

1 conduct a new hearing or hear arguments and may consider the  
2 magistrate judge's record and make an independent determination  
3 thereon. The judge may, but is not required to, accept or consider  
4 additional evidence, or may recommit the matter to the magistrate  
5 judge with instructions. *United States v. Howell*, 231 F.3d 615, 621  
6 (9<sup>th</sup> Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), Fed. R. Civ. P.  
7 73; LMR 4, Local Rules for the Eastern District of Washington.

9 A magistrate judge's recommendation cannot be appealed to a  
10 court of appeals; only the district judge's order or judgment can be  
11 appealed.

12 The District Court Executive is directed to file this Report  
13 and Recommendation and provide copies to Petitioner and the  
14 referring district judge.

16 DATED April 17, 2006.

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19 S/ CYNTHIA IMBROGNO  
20 UNITED STATES MAGISTRATE JUDGE  
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